IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sheo Krishan Vyas v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.425/1995
under Articles 226 and 227 of the Constitution of India.

Date of Order : 1st September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.K.M.Vyas, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner, a Upper Division Clerk in the office of Sub Divisional Officer, Pokaran, had given a notice dated 1.9.1993 in writing to the appointing authority seeking voluntary retirement from service w.e.f. 31.1.1994. The appointing authority by an order dated 18.10.1993 accepted the application dated 1.9.1993 and ordered to retire the petitioner w.e.f. 31.1.1994.

By an another application dated 21.1.1994 the petitioner prior to retirement coming into effect withdrew the notice dated 1.9.1993, however, the petitioner was not permitted to resume duty on

1.2.1994 and subsequent to that by treating him retired from service under the order dated 18.10.1993. Hence the present petition for writ is preferred by the petitioner.

While substantiating the writ as claimed it is urged by counsel that it was open for the petitioner to withdraw the notice for retirement before coming it in force. Counsel has supported the petitioner's claim by placing reliance upon a Division Bench judgment of this Court in the case of Madanlal v. State of Rajasthan, reported in 2002(1) RLR 307.

On the other hand it is stated by counsel for the respondents that once the request made by the petitioner seeking voluntary retirement under Rule 244 of the Rajasthan Service Rules, 1951 (hereinafter referred to as “the Rules of 1951”) was accepted the option to retire become final thereafter no withdrawal was permissible.

Heard counsel for the parties.

The Division Bench of this Court in the case of Madanlal (supra) while interpreting the provisions of Rule 244 of the Rules of 1951 held that any person who has given notice for retirement can withdraw the same before expiry of three months or in case any date has been given in the notice before expiry of such

date. The option of incumbent to withdraw from his notice cannot be inhabitate with acceptance of such notice by employer. The right of an employee to withdraw from the request of seeking retirement is not subject to be made before his request is accepted, but is accepted subject to one condition only i.e. before retirement becomes effective.

In the present case the petitioner submitted application dated 1.9.1993 seeking voluntary retirement under Rule 244 of the Rules of 1951 w.e.f. 31.1.1994 and withdrew the same on 21.1.1994 i.e. prior to retirement becoming effective.

In view of the facts stated above the law laid down by Division Bench of this Court in the case of Madanlal (supra) is having absolute application in present matter too.

Accordingly the writ petition deserves acceptance. The same, therefore, is allowed. It is declared that the respondents could not have acted on notice of voluntary retirement by ignoring withdrawal of notice of voluntary retirement dated 21.1.1994 which was given prior to the date when retirement was to become effective as shown in the notice dated 1.9.1993. The petitioner, therefore, is entitled to be put back to service with all consequential benefits he being treated as in job continue w.e.f. 31.1.1994. The

retiral benefits paid to the petitioner be adjusted against the arrear of back wages which are required to be paid to the petitioner in view of directions given above.

(GOVIND MATHUR),J.

kkm/ps.